

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 249 of 1997

in

SPECIAL CIVIL APPLICATION No 2232 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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ISSARDAS TOLARAM

Versus

UNION OF INDIA

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Appearance:

MR CJ VIN for Petitioner  
MR SV BACHANI for Respondent No. 3

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 21/04/97

ORAL JUDGEMENT

Admitted. Mr.S.V.Bachani appears for respondent

no.3. Respondent Nos.1 and 2, though served did not appear. Learned counsel for the appellant states that even before the learned Single Judge, the respondent No.1 did not appear. Mr.Bachani appears and waives service on behalf of respondent no.3 Vasumal.A.Bachani, since deceased by his legal heir Bhagavatiben (auction purchaser). The learned Single Judge dismissed the petition and passed order regarding payment of compensation as also payment of costs. The learned Single Judge observed that in public auction held in the year 1980, the husband of respondent no.3 purchased property but because of the litigation and proceedings initiated by the present appellant, she was deprived of legitimate benefit ensuing from the public auction. The learned Single Judge, therefore, thought it fit to grant compensation of Rs.25,000/- and passed order accordingly. Regarding costs, the learned single Judge was of the view that this was the case in which exemplary costs deserved to be awarded and accordingly cost was quantified at Rs.5000/-. At the request of the learned counsel for the respondent, however, the said amount was ordered to be paid to the Bar Council in Advocates' Welfare Fund.

2. When the matter was placed for admission, initially we issued notice on April 4, 1997 by passing the following order:

" So far as surrender is concerned, it is a pure question of fact, which cannot be appreciated. The learned Counsel for the appellant, however, states that an order regarding payment of compensation to the tune of Rs.25,000/- and awarding cost of Rs.5000/- is on higher side. However, notice only qua compensation and costs returnable on 20.4.1997.DS"

To day the matter is called out. In our opinion, in view of the notice issued by us and controversy which has been limited by us in pursuance of the notice issued by us it is not necessary to hear respondent nos.1 and 2 as they would not be obviously affected by our order. We have heard Mr.Vin, the learned counsel for the appellant and Mr.Bachani for the respondent no.3.

Mr.Vin submitted that in the facts and circumstances of the case, the amount of compensation awarded by the learned Single Judge to the tune of Rs.25,000/- was grossly disproportionate and excessively high. He further submitted that an amount of costs ought not to have been passed in the facts and circumstances of

the case.

Mr.Bachani, on the other hand, submitted that in the facts and circumstances of the case and an amount of Rs.25,000/- was not on higher side. On the contrary, much more amount ought to have been awarded. Regarding costs, however, he did not press for the said amount.

Considering the facts and circumstances and more particularly in the light of the fact that the husband of respondent no.3 purchased the property by public auction and thus he was bonafide purchaser and he was deprived of the usurp of the said transaction for a period of 15 years. in our opinion, the learned Single Judge has not committed any error either in fact or in law, which requires interference by us. The learned Single Judge observed that had the respondent no.3 taken possession immediately after the auction took place, he would have made construction and now it would be much more costly. Again the property is situated in Surat. In light of these circumstances, in our opinion an order regarding compensation does not require any interference. Regarding cost, as per statement made by the learned counsel for the respondent no.3, the appeal requires to be partly allowed and the said order is hereby set aside. Appeal is accordingly partly allowed. No order as to costs.

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